

REMARKS/ARGUMENTS

Favorable reconsideration of this application is requested in view of the above amendments and in light of the following remarks and discussion.

Claims 1-77 are pending in the application. Claims 1, 3-8, 10-14, 16-18, and 19-77 have been amended, and Claim 78 has been canceled without prejudice or disclaimer. Support for the changes to Claims 1, 3-8, 10-14, 16-18, and 19-77 is believed to be self evident from the originally filed claims as the present amendments have been made to better highlight the subject matter of original claims 1-77. Therefore no new matter is added.

The outstanding Action presented a stated rejection of Claims 62-77 under 35 U.S.C. §101 as including "intangible media," a stated rejection of Claims 1-3, 5-22, 24-62, and 78 being anticipated by Imamatsu (U.S. Patent No. 6,687,901), and a stated rejection of Claims 4 and 23¹ as being unpatentable over Imamatsu in view of Todd et al. (U.S. 5,867,714, Todd).

OUTSTANDING ACTION FAILS TO COMPLY WITH MPEP § 707.07(d)

MPEP § 707.07(d) notes that "[w]here a claim is refused for any reason relating to the merits thereof it should be "rejected" and the ground of rejection fully and clearly stated, and the word "reject" must be used. The examiner should designate the *statutory basis* for any ground of rejection by express reference to a section of 35 U.S.C. in the opening sentence of each ground of rejection. "

The statement of the rejection under 35 U.S.C. § 103 at the bottom of page 4 of the outstanding Action specifically includes only Claims 4 and 23. On the other hand, pages 5-6 of the outstanding Action seem to improperly suggest that at least Claims 21, 22, 24, 26-35,

¹ The outstanding Action is less than clear that only Claims 4 and 23 are included in this rejection although these are the only claims listed in the required statement of the rejection. The improper treatment of Claims 20-22, 24, 26-41, 43, 46-49, 52-55, 57-66, and 68-71 under this ground of rejection is treated below.

37-40, 43, 45, 47-49, 52-55, 57-61, 63-66, and 68 are also being subjected to this 35 U.S.C. § 103 rejection.

Besides this improper indication of an implied rejection being made as to Claims 21, 22, 24, 26-35, 37-40, 43, 45, 47-49, 52-55, 57-61, 63-66, and 68 under 35 U.S.C. 103, pages 5-6 of the outstanding Action further fail to positively indicate what reference or references are being relied on as to this improper implied rejection. In this regard, it is well established that whenever any reference is relied on to support a rejection, that reference must be positively included in the statement of the rejection. See *In re Hoch*, 428 F.2d 1341, 1342 n.3 166 USPQ 406, 407 n. 3 (CCPA 1970). The implied rejection includes no express statement of the rejection and no express statement as to the reference (or references) being relied upon.

In this last regard, the only indication of any reliance on a reference at pages 5-6 of the outstanding Action arises from an implication associated with the incorporation of the rejection applied to Claims 20, 36, 41, 46, and 62 and further stated reliance on the “rational” (apparently as to anticipation by Imamatsu) offered as to rejecting each of these claims.²

The situation is confused, however, because page 5 of the outstanding Action admits that Imamatsu does not teach scheduling the update date and time relative to . . . a schedule writing part . . . a schedule generating part . . . and a schedule transmitting part” On the other hand, at least Claims 28-32, 36-45, 49-58, and 65-74 require such update date and time scheduling features. Thus, it seems that some other reference teaching these features not taught by Imamatsu has to be relied on to supply these teachings not found in Imamatsu and

² Specifically, it is stated that the rejection “of claim 20 is incorporated and further claims 21-22 and 24, 26-35 recited and inherits similar limitations therefore, claims 21-22 and 24, 26-35 are rejected under same rational.” Similarly it is stated that the rejection of “claim 36 is incorporated and further claims 37-40 recited and inherits similar limitations therefore, claims 37-40 are rejected under same rational”, that the rejection of “claim 41 is incorporated and further claims 43 and 45 recited and inherits similar limitations therefore, claims 43 and 45 are rejected under same rational”, that the rejection of “claim 46 is incorporated and further claims 47-49, 52-55 and 7-61 recited and inherits similar limitations therefore, claims 47-49, 52-55 and 7-61 are rejected under same rational”, and that the rejection of “claim 62 is incorporated and further claims 63-66 and 68-71 recited and inherits similar limitations therefore, claims 63-66 and 68-71 are rejected under same rational.”

that at least in part are recited by Claims 28-32, 37-40, 43, 45, 49, 52-55, 57, 58, 65, 66, and 68.

However, not only is no such reference cited as to rejecting Claims 28-32, 37-40, 43, 45, 49, 52-55, 57, 58, 65, 66, and 68 that contain such update date and time scheduling subject matter, Claims 5-9 (that depend from Claim 4 and, thus, include all its limitations) and Claims 24-27 (that depend from Claim 23 and, thus, include all its limitations) have been improperly rejected as anticipated by Imamatsu along with above-noted scheduling subject matter Claims 24, 26-32, 37-40, 43, 45, 49, 52-55, 57, and 58. Clearly these rejections are all improper rejections based only on the teachings of Imamatsu as this reference has been admitted to have no teachings of scheduling update dates and times as noted in the explanation of the rejection of Claims 4 and 23 at the middle of page 5 of the outstanding Action.

TRAVERSE OF THE 35 U.S.C. §101 REJECTION OF CLAIMS 62-77

The rejection of Claims 62-77 under 35 U.S.C. §101 as including "intangible media" is traverse as these claims as presently amended all require "[a] tangible computer-readable recording medium product."

**TRAVERSE OF THE REJECTION OF CLAIMS 1-3, 5-22, 24-62, AND 78 BEING
ANTICIPATED BY IMAMATSU**

First it is noted that the rejection of Claim 78 is considered to be moot as that claim has been canceled.

Secondly, it is note that "[a] claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d

1051, 1053 (Fed. Cir. 1987). The outstanding Office Action admits that the scheduling of date and time of update subject matter of Claims 4 and 23 is not taught by Imamatsu as noted above. Accordingly, the rejection of Claims 5-9 (that depend from Claim 4 and, thus, include all its limitations) and Claims 24-27 (that depend from Claim 23 and, thus, include all its limitations) as being anticipated by Imamatsu is traversed and the withdrawal thereof is respectfully requested.

Similarly, and as further noted above, at least Claims 28-32, 36-45, and 49-58 require such update of date and time scheduling features. Claims 10-15 also recite such update of date and time scheduling features. As this further claimed subject matter is clearly also not taught by Imamatsu, the rejection of these claims as being anticipated by Imamatsu is traversed and the withdrawal thereof is also respectfully requested.

Turning to the rejection of Claims 1-3, 16-22, 33-35, 46-48, and 59-62, as being anticipated by Imamatsu this rejection is also traversed because it is clear that Imamatsu does not teach or even suggest all the limitations of these claims.

In this regard exemplary independent Claim 1 is clear that the claimed remote management system is performing remote management of a plurality of electronic apparatuses via a communication line and an intermediary apparatus, where this intermediary apparatus must further communicate with a remote managing apparatus. Claim 1 specifies that the remote managing apparatus has to have at least the claimed:

a first storage part that stores first software configured to update
second software stored by each of the electronic apparatuses; and

a remote managing apparatus software transmitting part that transmits
the first software retrieved from the first storage part to the intermediary
apparatus via the communication line.

Claim 1 further specifies that it is the claimed the intermediary apparatus that has:

a second storage part;

a software writing part that writes the first software to the second storage part when acquiring the first software from the remote managing apparatus software transmitting part; and

an intermediary apparatus software transmitting part that transmits the first software stored in the second storage part to at least one of the electronic apparatuses when the at least one of the electronic apparatuses requires the second software stored therein to be updated.

Lastly, Claim 1 requires there to be electronic apparatuses that each have:

a non-volatile storage part storing the second software controlling an operation of the electronic apparatus; and

a software updating part that updates the second software stored in the non-volatile storage part based on the first software when receiving the first software from the intermediary apparatus software transmitting part.

Rather than address the requirements of the independent claims (i.e., each of independent Claims 1, 20, 36, 41, 46, and 62) for the separate remote managing apparatus, the separate intermediary apparatus, and the separate electronic apparatuses, the outstanding Action simply picks many of the same elements of the same overall devices and suggests they read on the components found in these separately recited claim elements. Thus, for example, the storage associated with memory 23 (that includes the mask ROM 32, the flash ROM 33 and battery backup RAM 34, see col. 5, lines 49-52) of the mobile terminal 10 of Imamatsu is relied on to teach both the first storage part that is required to be in the remote managing apparatus (relative to teachings at col. 6, lines 23-35) and the non-volatile storage part of each of the electronic apparatuses (relative to teachings at col. 5, line 47-52).

Such reliance ignores that the independent claims specify a particular arrangement of the claimed elements and that in order to establish anticipation it is required that the reference teach exactly the same arrangement. *See In re Bond*, 910 F.2d 831, 15 USPQ2d 1566 (Fed. Cir. 1990) noting that the reference elements relied on must be arranged as required by the claim.

Accordingly, as Imamatsu does not teach an arrangement of elements as specified by these independent claims, the rejection of these independent Claims 1, 20, 36, 41, 46, and 62 as being anticipated by Imamatsu is traversed and the withdrawal thereof is also respectfully requested.

**TRAVERSE OF THE REJECTION OF CLAIMS 4 and 23 AS BEING
UNPATENTABLE OVER IMAMATSU IN VIEW OF TODD**

Claim 4 depends from independent Claim 1 and Claim 23 depends from independent Claim 20. Accordingly, Claim 4 includes all the subject matter of independent Claim 1 and Claim 23 includes all the subject matter of independent Claim 20. As Todd does not cure the deficiencies noted above as to Imamatsu, the rejection of Claims 4 and 23 as being unpatentable over Imamatsu in view of Todd is traversed for the above-noted reasons.

In addition, the outstanding Action suggests that the artisan would have a reason to modify the Imamatsu taught system that determines if there is a necessity of updating the control-software by comparing the version information received from the radio terminal device with the latest version information stored in and managed by the software-supply device to become a system that simply makes scheduled transmissions of configuration data as suggested by Todd. However, the system of Imamatsu is based on the control-software 204 in each radio terminal device 200 being updated "as the radio terminal device 200 accesses the software-supply 100 device voluntarily and reports its control-software version," see col. 3, lines 44-46. This permits the version to be checked to see if the software updating process is needed. The scheduling of date and times for making the updates cannot guarantee that the mobile terminal will be in contact with a base station at any particular time and would make no logical sense as to the Imamatsu system. The suggestion of using scheduling

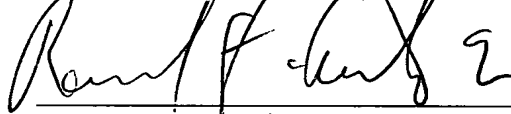
to be more efficient at page 5 of the outstanding Action is clearly not relevant to the proposed change.

Consequently, as the artisan would not have had any reasonable basis to attempt to totally redesign the Imamatsu system to operate on a time schedule basis by the teachings of Todd, this rejection of Claims 4 and 23 is traversed for this reason as well.

Accordingly, it is respectfully submitted that no further issues remain outstanding in the present application, and that this application is clearly in condition for formal allowance and an early and favorable action to that effect is, therefore, respectfully requested.

Respectfully submitted,

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